

From: Tenreiro, Jorge
To: "Drylewski, Alexander C"
Cc: Charmani, Thania; McGrath, Kevin; Levine, Alison R; Stewart, Ladan F; Malloy, Christopher P
Subject: RE: SEC v. Telegram, et al., No. 19-cv-9439(PKC) (S.D.N.Y.)
Date: Thursday, December 26, 2019 5:12:00 PM

Counsel:

We are fine to only have one call tomorrow, to cover the proposed stipulations of fact. Today, as I indicated in our email below, we wanted to discuss our continued disagreement over your refusal to designate a 30(b)(6) witness to respond to Topics No. 25 and 26 of our 30(b)(6) deposition notice, which relate to Telegram's specific expenditures related to its development of TON Blockchain at various stages of its development, including up to October 31, 2019, at present, and expected future expenditures, and the amount of funds remaining from the Initial Offering after the launch, and the expected use of those funds. Reference is also made to Document Requests 8 and 9 of our subpoena to you dated October 11, 2019. There, we asked, *inter alia*, for the financial records reflecting the current amount of funds raised in the Grams offering, and the use to which the funds were put. So far, you have only provided limited, redacted bank records, showing certain but not all amounts credited to your accounts, and redacting all debits.

In our previous meet and confers, we have explained to you our view that the amounts Telegram has expended and will expend to develop the TON Blockchain are relevant to whether Telegram has made and will make efforts from which a reasonable purchaser of Grams could expect to profit. You have stated that you disagree that this evidence is relevant for that purpose. We would like to note that the information sought in these topics is relevant to other issues in dispute in this litigation. As you know, you filed two Forms D claiming to have raised \$1.7 Billion as of 3/29/18, stating in those Forms D your view that the Purchase Agreements themselves are securities exempt from registration under Regulation D (an assertion you have repeated, among other things, in your answer to the Complaint, including by citing to Rule 506(c) under Regulation D). As you know, that exemption is not available to you if you sold the Purchase Agreements to underwriters, and we are entitled to probe that affirmative defense. This includes probing evidence of payments to underwriters, which we have seen in documents such as the invoices we showed Mr. Perekopsky in his deposition. The bank account statements would thus tell us how much Telegram got from the offering, when, and from whom, and can further permit probing whether you made payments to underwriters, when, and in what amounts. The information sought is relevant to other topics. For example, the marketing materials for Grams tie the "demand and value" for Grams to the development of and increase in user base for Messenger. The documents also explain that Telegram will use funds to support Messenger's development. Accordingly, evidence of Telegram's use of funds to develop Messenger is similarly tied to the efforts that have been made (or that still will need to be made) to support investments in Grams.

Accordingly for these and the other reasons we have previously discussed with you, we request that you indicate whether you will produce fully un-redacted versions of these bank records and designate a 30(b)(6) witness to discuss these topics.

We kindly request that you inform us during our call tomorrow if you will agree to produce any of the above-requested information. Given the expedited discovery schedule, the upcoming federal holiday, and the pendency of the 30(b)(6) deposition, we intend to seek relief from the Court tomorrow if we are not able to find agreement on these matters.

Thanks

From: Drylewski, Alexander C <Alexander.Drylewski@skadden.com>
Sent: Thursday, December 26, 2019 2:13 PM
To: Tenreiro, Jorge <tenreiroj@SEC.GOV>
Cc: Charmani, Thania <Thania.Charmani@skadden.com>; McGrath, Kevin <McGrathK@SEC.GOV>; Levine, Alison R <levineali@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Malloy, Christopher P <Christopher.Malloy@skadden.com>
Subject: RE: SEC v. Telegram, et al., No. 19-cv-9439(PKC) (S.D.N.Y.)

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Yes, noon tomorrow works. Rather than two calls, should we discuss the funds raised issue tomorrow as well?

From: Tenreiro, Jorge <tenreiroj@SEC.GOV>
Sent: Thursday, December 26, 2019 2:04 PM
To: Drylewski, Alexander C (NYC) <Alexander.Drylewski@skadden.com>
Cc: Charmani, Thania (NYC) <Thania.Charmani@skadden.com>; McGrath, Kevin <McGrathK@SEC.GOV>; Levine, Alison R <levineali@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Malloy, Christopher P (NYC) <Christopher.Malloy@skadden.com>
Subject: [Ext] Re: SEC v. Telegram, et al., No. 19-cv-9439(PKC) (S.D.N.Y.)

Thanks. Can we do the stips call tomorrow at 12 instead of 11 and is there a dial-in?

Also, please let us know your availability late this afternoon to discuss the dispute we haven't resolved regarding disclosure of use of funds raised

Thanks

Sent from my iPhone

On Dec 26, 2019, at 2:00 PM, Drylewski, Alexander C <Alexander.Drylewski@skadden.com> wrote:

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Thanks – we're working on getting you a revised production asap.

Alex

From: Charmani, Thania (NYC)
Sent: Thursday, December 26, 2019 10:41 AM
To: Tenreiro, Jorge <tenreiroj@sec.gov>
Cc: McGrath, Kevin <McGrathK@sec.gov>; Levine, Alison R <levineali@sec.gov>; Stewart, Ladan F <stewartla@sec.gov>; Drylewski, Alexander C (NYC) <Alexander.Drylewski@skadden.com>; Malloy, Christopher P (NYC) <Christopher.Malloy@skadden.com>
Subject: Re: SEC v. Telegram, et al., No. 19-cv-9439(PKC) (S.D.N.Y.)

Thank you.

On Dec 26, 2019, at 10:40 AM, Tenreiro, Jorge <tenreiroj@sec.gov> wrote:

Done

From: Charmani, Thania <Thania.Charmani@skadden.com>
Sent: Tuesday, December 24, 2019 6:25 PM
To: Tenreiro, Jorge <tenreiroj@SEC.GOV>; McGrath, Kevin <McGrathK@SEC.GOV>; Levine, Alison R <levineali@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>
Cc: Drylewski, Alexander C <Alexander.Drylewski@skadden.com>; Malloy, Christopher P <Christopher.Malloy@skadden.com>
Subject: RE: SEC v. Telegram, et al., No. 19-cv-9439(PKC) (S.D.N.Y.)

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Jorge,

Due to a technical issue, the documents you identified below and other similar documents were

inadvertently included in Telegram's eleventh rolling production of documents. Pursuant to Paragraph (7)(e) of the parties' Stipulation and Protective Order ordered by the Court on November 12, 2019 (the "Protective Order"), we are clawing back Telegram's eleventh production of documents (i.e., all documents bates stamped as TLGRM-013) and we will reproduce as soon as possible. Please promptly destroy all copies of Telegram's eleventh production and provide confirmation that you have done so. If these documents have been shared with any parties other than the SEC, please promptly ensure that those parties have destroyed the documents pursuant to the Protective Order and provide confirmation of the same.

Thank you very much for raising this issue and happy holidays.

Best,
Thania

Thania Charmani
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square | New York | 10036-6522
T: 212.735.3502 | F: 917.777.3502
thania.charmani@skadden.com
 Please consider the environment before printing this email.

From: Tenreiro, Jorge [<mailto:tenreiroj@SEC.GOV>]
Sent: Tuesday, December 24, 2019 3:29 PM
To: Charmani, Thania (NYC); McGrath, Kevin; Levine, Alison R; Stewart, Ladan F
Cc: Drylewski, Alexander C (NYC); Malloy, Christopher P (NYC)
Subject: [Ext] RE: SEC v. Telegram, et al., No. 19-cv-9439(PKC) (S.D.N.Y.)

Hi Thania:

Thank you for this production. Due to the limited amount we have time left before our next depositions, I planned on devoting the rest of my work day today, sadly, to completing our review of this production. However, I have become concerned as I waded through the first handful, that you may have produced privileged documents. Perhaps I am misunderstanding what these documents are and, if so, I apologize, and please confirm that you are not asserting privilege over these documents. Otherwise, I kindly request that you get back to me as soon as you are able about whether you need to claw back documents from this production, so that I may continue and finalize our review as soon as possible. Examples attached.

Jorge

From: Charmani, Thania <Thania.Charmani@skadden.com>
Sent: Monday, December 23, 2019 11:51 PM
To: Tenreiro, Jorge <tenreiroj@SEC.GOV>; McGrath, Kevin <McGrathK@SEC.GOV>; Levine, Alison R <levineali@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>
Cc: Drylewski, Alexander C <Alexander.Drylewski@skadden.com>; Malloy, Christopher P <Christopher.Malloy@skadden.com>
Subject: SEC v. Telegram, et al., No. 19-cv-9439(PKC) (S.D.N.Y.)

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Jorge,

Please find attached a letter accompanying Telegram's eleventh rolling production comprising documents with Bates range TLGRM-013-00000001 through TLGRM-013-00012796.

We will also send you the production via Accellion. You will receive the password in a separate email. Please let us know if you have any issues.

Happy Holidays to you and your team.

Best,
Thania

Thania Charmani
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square | New York | 10036-6522
T: 212.735.3502 | F: 917.777.3502
thania.charmani@skadden.com

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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